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(C) The Board is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(e) *Advice to bank supervisory agencies.* The Reserve Bank shall send a copy of any notice to the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(f) *Investigation and report.* (1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any savings and loan holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(g) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice.

(h) *Disapproval and hearing—* (1) *Disapproval of notice.* The Board may disapprove an acquisition if it finds adverse effects with respect to any of the

factors set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)) (i.e., competitive, financial, managerial, banking, or incompleteness of information).

(2) *Disapproval notification.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action.

(3) *Hearing.* Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

Subpart E—Qualified Stock Issuances

§ 238.41 Qualified stock issuances by undercapitalized savings associations or holding companies.

(a) *Acquisitions by savings and loan holding companies.* No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if prior approval of such acquisition is granted by the Board under this subpart, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) *Qualification.* For purposes of this section, any issuance of shares of stock shall be treated as a qualified stock

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issuance if the following conditions are met:

(1) The shares of stock are issued by—

(i) An undercapitalized savings association, which for purposes of this paragraph (b)(1)(i) shall mean any savings association—

(A) The assets of which exceed the liabilities of such association; and

(B) Which does not comply with one or more of the capital standards in effect under section 5(t) of HOLA; or

(ii) A savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(2) All shares of stock issued consist of previously unissued stock or treasury shares.

(3) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Board in accordance with the provisions of section 10(b) of the HOLA and the Board's regulations promulgated thereunder.

(4) Subject to paragraph (c) of this section, the Board approves the purchase of the shares of stock by the acquiring savings and loan holding company.

(5) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(6) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(7) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of HOLA and the Board's regulations promulgated thereunder.

(c) *Approval of acquisitions*—(1) *Criteria*. The Board, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in § 238.15(a), (b), and (c).

(2) *Additional capital commitments not required*. The Board shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Board or any other Federal agency having jurisdiction.

(3) *Other conditions*. The Board shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Board determines to be appropriate, including—

(i) A requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Board may require; and

(ii) Such other conditions as the Board deems necessary or appropriate to prevent evasions of this section.

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(4) *Application deemed approved if not disapproved within 90 days.* (i) An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Board if such application has not been disapproved by the Board before the end of the 90-day period beginning on the date of submission to the Board of the complete record on the application as defined in § 238.14(g)(3)(ii).

(d) *No limitation on class of stock issued.* The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(e) *Application form.* A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this subpart shall submit the appropriate form to the appropriate Reserve Bank.

Subpart F—Savings and Loan Holding Company Activities and Acquisitions

§ 238.51 Prohibited activities.

(a) *Evasion of law or regulation.* No savings and loan holding company or subsidiary thereof which is not a savings association shall, for or on behalf of a subsidiary savings association, engage in any activity or render any services for the purpose or with the effect of evading any law or regulation applicable to such savings association.

(b) *Unrelated business activity.* No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, or continue any business activity after the end of the two-year period beginning on the date on which such company received approval to become a savings and loan holding company that is subject to the limitations of this paragraph (b), except (in either case) the following:

(1) Furnishing or performing management services for a savings association subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary savings association of such company;

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(4) Holding or managing properties used or occupied by a subsidiary savings association of such company;

(5) Acting as trustee under deed of trust;

(6) Any other activity;

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act; or

(ii) Is set forth in § 238.53, subject to the limitations therein; or

(7) (i) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if prior approval for the acquisition of such stock by such savings and loan holding company is granted by the Board pursuant to § 238.41.

(ii) Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a(e), as then in effect, to acquire control of a savings association shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Treatment of certain holding companies.* If a director or officer of a savings and loan holding company, or an individual who owns, controls, or holds with the power to vote (or proxies representing) more than 25 percent of the voting shares of a savings and loan holding company, directly or indirectly controls more than one savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in paragraph (b) of this section, to the same extent such limitations apply to multiple savings and loan holding companies pursuant to §§ 238.51, 238.52, 238.53, and 238.54.

§ 238.52 Exempt savings and loan holding companies and grandfathered activities.

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 238.51(b):

(i) Any savings and loan holding company (or subsidiary of such company)